

**Notice of Allowability**

Application No.

10/018,290

Examiner

Zachariah Lucas

Applicant(s)

HASSE ET AL.

Art Unit

1648

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the After-Final Amendment of May 5, 2005.
2. ☒ The allowed claim(s) is/are 1,2,13 and 14.
3. ☒ The drawings filed on 13 November 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____.   |

### DETAILED ACTION

1. Claims 1-3, 6-8, 10, 13, 14, and 17, 19, 20, and 22-38 were pending in the application upon the mailing of the Final action on March 8, 2005. Claims 1 and 2 were indicated to be allowable, claims 13 and 14 were objected to a depending on rejected claims; claims 3, 6-8, 10, 17, 19, and 20 were rejected; and claims 22-38 were withdrawn as to non-elected inventions. In the After-Final Response of May 5, 2005, the Applicant cancelled claims 3, 6-8, 10, 17, 19, 20, and 22-38, and amended claims 13 and 14. Claims 1, 2, 13, and 14 remain pending in the application. In view of the amendment of claims 13 and 14 such that they now depend on allowable claim 2, each of claims 1, 2, 13, and 14 is allowed.

### *Claim Rejections - 35 USC § 112*

2. **(Prior Rejection- Withdrawn)** Claim 10 was rejected under 35 U.S.C. 112, second paragraph as being indefinite for depending on a cancelled claim. In view of the cancellation of the claim, the rejection is withdrawn.
3. **(Prior Rejection- Withdrawn)** Claims 6-8, and 10 were rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for immunogenic polypeptides of SEQ ID NO: 1, does not reasonably provide enablement for any variant or homologue thereof. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. In view of the cancellation of these claims, the rejection is withdrawn.
4. **(Prior Rejection- Withdrawn)** Claims 6-8, and 10 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s)

Art Unit: 1648

contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims were rejected as lacking sufficient written description support for the full scope of the claimed genus. In view of the cancellation of these claims, the rejection is withdrawn.

5. **(Prior Rejection- Withdrawn)** Claims 3, 8, 10, 17-21, and 39 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for immunogenic polypeptides or compositions comprising a peptide of an L intracellularis OmpH protein, does not reasonably provide enablement for any polypeptides of SEQ ID NO: 1, or derivatives thereof, capable of inducing a protective immune response or for vaccines comprising such polypeptides. In view of the cancellation of these claims, the rejection is withdrawn.

### ***Conclusion***

6. Claims 1, 2, 13, and 14 are allowed.

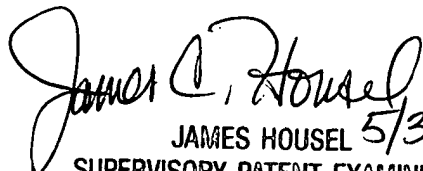
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1648

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Z. Lucas  
Patent Examiner

  
JAMES HOUSEL 5/31/05  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600